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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/815,478	03/23/2001	Donna B. Dulong	CRNI.125945	5342

46169 7590 08/19/2008

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ART UNIT	PAPER NUMBER
3626	

MAIL DATE	DELIVERY MODE
08/19/2008	PAPER

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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 09/815,478
Filing Date: March 23, 2001
Appellant(s): DULONG ET AL.

John S. Golian #54,702
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 6/16/2008 appealing from the Office action mailed 12/13/2007.

(1) Real Party in Interest

The real party in interest is Cerner Innovation Inc. a corporation of the state of Delaware, United States of America.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,671,563	Engelson et al.	12-2003
6,529,892	Lambert	04-2003

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

1. Claims 1-51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Engelson et al., U.S. Patent No. 6,671,563 in view of Lambert, U.S. Patent No. 6,529,892.

2. As per claim 1, As per claim 1, Engelson teaches a computer programmed method for providing one or more medication administration comments for preventing medication administration errors, wherein the one or more medication administration comments are provided at a place of administration of a medication in a hospital setting, the method comprising: accepting a medication administrator identification for a medication administrator (see column 13, lines 32-35); accepting a patient identification for a patient (see column 13, lines 25-28); displaying a graphical user interface listing one or more medications scheduled for administration to the patient (see column 8, lines 57-60); accepting a user selection of one of the listed medications from the medication administrator, the selected medication corresponding with a medication to be administered to the patient by the medication administrator (see column 13, lines 28-32, since the patient's MAR displays a graphical listing of all scheduled medications, the selection of the particular medication, through the use of a bar code, constitutes a selection of one of the listed medications); providing a data store having compliance rules that include conditions and medication administration comments (see column 9, lines 13-24); determining if a condition for a compliance rule has been satisfied(see column 13, lines 49-54); and displaying at the place of administration of the medication in a hospital setting, on a display device, the one or more medication administration comments associated with the at least one compliance rule when the condition has been satisfied (see column 13, lines 54-60).

3. Engelson does not explicitly teach two or more compliance rules corresponding with the selected medication, the two or more compliance rules including at least a first compliance rule and a second compliance rule, wherein the first compliance rule includes a first condition and one or more first medication administration comments specific to the selected medication and the first condition, and wherein the second compliance rule includes a second condition and one or more second medication administration comments specific to the selected medication and the second condition. Lambert teaches two or more compliance rules corresponding with a selected medication, the two or more compliance rules including at least a first compliance rule and a second compliance rule, wherein the first compliance rule includes a first condition and one or more first medication administration comments specific to the selected medication and the first condition, and wherein the second compliance rule includes a second condition and one or more second medication administration comments specific to the selected medication and the second condition (see column 3, lines 55 column 4, lines 9 and column 5, line 51 – column 6, line 8). In addition, Lambert contemplates this drug checking technique in the context of hospital drug administration (see column 1, lines 16-65). It would have been obvious to one of ordinary skill in the art at the time of the invention to include this drug checking technique within the drug administration system of Engelson. One of ordinary skill in the art would have been motivated to include such a technique for the purpose of providing additional safety checks for the administration of medications not contemplated by Engelson (see column 4, lines 5-9 of Lambert).

4. As per claim 2, Engelson in view of Lambert teaches the method of claim 1 as described above. Engelson further teaches the conditions is satisfied when a generic name for a medication

matches the selected medication (see column 13, lines 49-54, since matching the name of the medication is one of the conditions, and both generic and brand name medications are routinely administered in a hospital environment, it is submitted that Engelson teaches this feature).

5. As per claim 3, Engelson in view of Lambert teaches the method of claim 1 as described above. Engelson further teaches the conditions is satisfied when a brand name for a medication matches the selected medication (see column 13, lines 49-54, since matching the name of the medication is one of the conditions, and both generic and brand name medications are routinely administered in a hospital environment, it is submitted that Engelson teaches this feature).

6. As per claim 6, Engelson in view of Lambert teaches the method of claim 1 as described above. Engelson further teaches the comment indicates additional verification of an aspect of the medication should be performed (see column 13, lines 54-65).

7. As per claim 13, Engelson in view of Lambert teaches the method of claim 1 as described above. Engelson further teaches the comment indicates that the medication should be administered by a certain route (see column 13, lines 49-60).

8. Claims 18-20, 23, and 30 recite substantially similar system limitations to method claims 1-3, 6, and 13 and, as such, are rejected for similar reasons as given above.

9. Claims 35-37, 40, and 47 recite substantially similar apparatus limitations to method claims 1-3, 6, and 13 and, as such, are rejected for similar reasons as given above.

10. Claims 4-5, 7-12, and 14-17 recite various additional types of comments that can be displayed on the display device. Although Engelson teaches displaying comments (appropriate information) when a condition for a compliance rule (discrepancy check) has been satisfied, the reference does not explicitly disclose the particular comments recited claims 4-5, 7-12, and 14

11. However these differences are only found in the non-functional data defining the comment displayed on the display device. Data identifying the type of comment displayed is not functionally related to the steps recited in the claim. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, *see Cf. In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994). Furthermore, in addition to the types of comments that are disclosed by Engelson, as described above, the various types of comments identified in claims 4-5, 7-12, and 14-17 are all old and well known in the art of medication administration.

12. Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to display any data on the display device as shown in Engelson because such data does not functionally relate to the steps recited in the claim and merely labeling the data differently from that in the prior art would have been obvious matter of design choice. *See In re Kuhle*, 526 F.2d 553, 555, 188 USPQ 7, 9 (CCPA 1975).

13. Claims 21-22, 24-29, and 31-34 recite substantially similar system limitations to method claims 4-5, 7-12, and 14-17 and, as such, are rejected for similar reasons as given above.

14. Claims 38-39, 41-46, and 48-51 recite substantially similar apparatus limitations to method claims 4-5, 7-12, and 14-17 and, as such, are rejected for similar reasons as given above.

(10) Response to Argument

Claims 1-17

The Appellant argues that "Engelson reference fails to discuss having two or more compliance rules for a given medication, in which each compliance rule has its own condition and own medication administration comments." The Examiner notes that within the Final Rejection dated

12/13/2007, the Examiner states that Lambert, not Engelson, teaches this feature. Therefore the Appellant's argument is directed toward the wrong prior art.

The Appellant continues his arguments by stating possible intended uses of his invention and how the potential intended use of the invention differs from the potential use of Engelson. The Examiner notes that these usages described are not claimed or defined and therefore the argument is not persuasive.

The Appellant argues that "the Lambert reference fails to cure the deficiencies of the Engelson reference, namely providing multiple compliance rules for a given medication, each compliance rule having a corresponding condition and medication administration comment, and providing a medication administration comment for at least one of those compliance rules when it is determined that a corresponding condition for that compliance rule has been satisfied." The Examiner notes that the claimed language is different than the Appellant's remarks. Specifically,

- providing a data store having two or more compliance rules corresponding with the selected medication, the two or more compliance rules including at least a first compliance rule and a second compliance rule, wherein the first compliance rule includes a first condition and one or more first medication administration comments specific to the selected medication and the first condition, and wherein the second compliance rule includes a second condition, and one or more second medication administration comments specific to the second medication and the second condition;

The Lambert reference is used to show a second compliance rule including a second condition and second medication administration comments. The Appellant narrows his arguments to this point by stating, "There is no indication in the Lambert reference of providing medication administration comments." The Examiner notes that the "medical administration comments" are not defined within the originally filed Specification and so are broadly understood to be a field containing additional information about the medical condition. The Examiner notes that

Lambert provides this additional information through the use of a quantitative measure of the consequences of confusion value. As shown within column 22, lines 40 - 44 or, "Yet another element of composite analyzer 230 is confusability score generator 325 that generates, for each of one or more target drugs, one or more processed target confusability scores 327 representing the confusability of the target drugs."

Claims 18 – 34

The Examiner notes that the Appellant makes similar arguments as made above for claims 1 – 18. The Examiner responds to the arguments for claims 18 – 34 as above.

Claims 35 - 51

The Examiner notes that the Appellant makes similar arguments as made above for claims 1 – 18 and 35 - 51. The Examiner responds to the arguments for claims 18 – 34 as above.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/N. R. S./

Examiner, Art Unit 3626

/C Luke Gilligan/

Supervisory Patent Examiner, Art Unit 3626

Conferees:

/C. G./

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Vincent Millin /VM/

Appeals Conference Specialist